IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.4063 OF 2004
AND
CRIMINAL M.P.Nos.1116 and 1117 OF 2004

M/s Jayam Food Processing Industries
rep. by its Managing Partner
R.Krishnasamy,
S.F.No.7/11 Nallanur Village,
Dharmapuri .. Petitioner/Accused-1

Vs.

M/s Salem Indian Soap and Vermicelle
Works rep. by its Managing Partner
Pee.Em.Or.Kubeayndhiyran,
Shevapet, Salem-2. .. Respondent/Complainant

Criminal Original Petition under Section 482 Cr.P.C. as stated therein.

For Petitioner: Mr.V.Pichaiya
For Respondent: No appearance.
(not ready in notice)

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O R D E R

This Criminal Original Petition has been filed praying to call for the records in C.C.No.452 of 2003 on the file of the Court of Judicial Magistrate No.V, Salem and quash the same.

2. On a perusal of the materials placed on record what comes to be known is that the complainant filed a private complaint against the petitioner and 2 others on the file of the Court of Judicial Magistrate No.V Salem for the offence punishable under Section 120-B, 403, 406, 409 and 420 of IPC and the same was taken on file in C.C.No.452 of 2003 on such averments that the complainant is a partnership firm doing business of purchase and sale of pulses grams, grains and dhall; the first accused being the partnership firm and the accused No.2 and 3 are partners of the first accused firm doing business of manufacturing pulses and grams and conversion of

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the pulses and grams into dhall; that the complainant and the accused No.2 were close friends; that Accused No.2 and 3 approached the complainant and requested to apply for a loan of Rs.one Crore with the Tamil Nadu Industrial Investment Corporation Limited, Salem and there was an oral agreement between them; that on the basis of the said agreement the complainant had applied a loan of Rs.one Crore with the TIIC and the said TIIC had sanctioned a short term loan of Rs.60,00,000/- to the complainant for the purpose of working capital for the existing unit for conversion of pulses and grains in to dhall; that as per the said oral agreement the accused had offered the property as collateral security for the said loan; that as per the said oral agreement the complainant had paid a sum of Rs.60,00,000/- to the accused by way of two cheques dated 13.6.1996 in favour of the accused; that the accused did not repay the borrowed amount along with interest; that there was a fire accident on 24.6.1996 in the factory of the accused; that the complainant reliably learn that the accused has received more than Rs.85,00,000/- from the Insurance Company by way of claims for the goods destroyed in the said fire accident; that even after receiving the said claim amount the accused did not care to settle the amount due to the complainant.

3. It is only to quash the said complaint the petitioner has come forward to file the above Criminal Original Petition on such grounds that A1 is the partnership firm and the petitioner/A2 and his wife/A3 are partners of the said company that the very allegations in the complaint does not disclose, if at all a case, a civil case and does not disclose criminality of any offence much less the offences complained of and they do not make out any cognizable offence against the petitioner and therefore, no investigation can be permitted by a police officer against the petitioner; that he is aged about 65 years; that he is engaged in the manufacture of pulses and grams and their conversion into dhall; that since the property got destroyed by fire, they filed claim petition before the Insurance Company and the matter is pending; that it is purely a civil nature; that major portion of the amount was already paid to the TIIC; that there is no question of cheating, breach of contract and criminal breach of trust, but it is only breach of oral contract; that the TIIC has taken the property. On such grounds he would pray for the relief extracted supra.

4. Heard the learned counsel for the petitioner with no representation on behalf of the respondents and the materials placed on record have also been perused.

5. In consideration of the facts pleaded having to the materials placed on record and upon hearing the learned counsel for the petitioner, this Court is of the view that the points raised by the petitioner in the above Criminal Original Petition could only be decided by trial on the basis of the oral and documentary evidence so

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as to decide whether the dispute between the petitioner and the complainant constitutes civil liability or criminal liability and further though the dispute between the petitioner and the complainant constitutes a civil liability, it does not preclude them from proceeding under Criminal Liability if certain criminality is involved in commission of an offence. If at all the petitioner is having any point it could only be agitated before the trial Court and the petitioner need not have come up to seek this Court to invoke its inherent powers conferred by law under Section 482 Cr.P.C. and hence this court is of the view that at this stage it is not desirable to quash the complaint straight away.

6. However, liberty is given to the petitioner to raise those points which are raised before this Court in the above Criminal Original Petition by means of preliminary objections at the time of framing of the charges and the trial court shall consider such of those legal grounds and legal issues and determine those issues prior to settling the other issues involved in the case. Further, since the petitioner is said to be aged about 65 years it is only desirable to consider his request for dispensing with the personal attendance during trial and hence the following order:-

In result,

(i) subject to the above observations, the above Criminal Original Petition is disposed of;

(ii) the personal attendance of the parties of the firm namely petitioner, the 2nd and 3rd accused in the case are ordered to be dispensed with on all future dates of hearing excepting on those days when their personal attendance is indispensable such as preliminary questioning, questioning u/s 313 of Cr.P.C., delivery of judgment etc., when the trial Court will be at liberty to summon the petitioner as required under Section 205 of Cr.P.C. The petitioner is permitted to appear before the trial Court through his pleader, as per Section 205 Cr.P.C.;

(iii) consequently, Crl.M.P.No.1116 of 2004 is also dismissed.

gr.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.V, Salem.

2. -Do- Through the Chief Jud'l Magistrate,
   Salem.

+ 1 CC to Mr.N.Kanakaraj, Advocate SR No.54337.

CRL.O.P.NO.4063 OF 2004

8.12.2004.

MAB (CO)
EJ

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